IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :- 30.11.2006

Coram:-

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal Nos.346 and 347 of 2006

The Executive Engineer and
Administrative Officer,
Erode Housing Unit,
Tamil Nadu Housing Board,
Surampatty Nall Road, Erode-9. … Appellant in both the Appeals/Respondent 3 in both WPs

Vs.

1. C.Muthusamy
2. P.Palanisamy
3. C.Chinnsamy … R1 to R3 in both Appeals/Petitioner 1 to 3 in both WP

4. Sekar @ Chandrasekar … R4 in WA.347/2006/Petitioner in WP.26086/05

5. Rathina … R-5 in WA.347/06 & R-4 in WA.346/2006/4th & 5th Petitioner in WP.26085/05 & 26086/05 respectively

6. The State of Tamil Nadu,
Rep. by its District Collector,
Erode District, Erode.

7. The Special Tahsildar (LA),
Neighbourhood Scheme,
Erode. … R-5 & R-6 in WA.346/2006 and R-6 & R-7 in WA.347/06. 1st & 2nd Respondents in both WPs

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Appeals filed under Clause 15 of Letters Patent Act against the Common Order of the learned single Judge, dated 17.08.2005, made in WP Nos.26085 & 26086 of 2005 presented under Article 226 of the Constitution of India for the issuance of Writ of Mandamus directing the respondents to refer the award No.5 and 3 of 1985 (LA.Nos.25 and 10 of 1982) dated 29.11.1985 and 28.11.85 to the competent Civil Court for enhancement/determination of the true market value of the land under section 18 of the Land Acquisition Act by considering the petitions notice dated 04.05.2005.

For Appellants : Mr.S.Kasikumar, for Mr.K.Chelladurai for Mr.K.Chelladurai.

For Respondents/ State : Mr.P.Subramanian, Govt. Advocate for R5 & R6

For other respondents : Mr.R.Muthukumarasamy, Senior Counsel for Mr.N.Manoharan for R1 to R4

Common Judgment

(Judgment of the Court, delivered by P.SATHASIVAM, J.)

Aggrieved by the Common Order of the learned single Judge, dated 17.08.2005, made in Writ Petition Nos.26085 and 26086 of 2005, directing the Special Tahsildar (Land Acquisition), Neighbourhood Scheme, Erode, to refer the matter under Section 18 of the Land Acquisition Act to the appropriate Civil Court for enhancement of compensation, the Executive Engineer and Administrative Officer, Erode Housing Unit, Tamil Nadu Housing Board, ie., the third respondent therein, has filed the above Writ Appeals.

2. Respondents herein/writ petitioners approached this Court for the issuance of writs of mandamus, directing the respondents therein to refer Award Nos.5 and 3 of 1985 (LA Nos.25 and 10 of 1982), dated 29.11.1985 and 28.11.1985, for determination of true market value of their lands under Section 18 of the Land Acquisition Act by considering their legal notice dated 04.05.2005. According to them, their lands were acquired by the Government for formation of a housing scheme and finally, awards were passed by the Special Tahsildar (Land Acquisition), Neighbourhood Scheme, Erode, as referred to above. It is their specific case that they were not agreeable for the amount fixed by the Tahsildar and prayed for reference under Section-18 of the Act to the competent Civil Court. It is their further case that all along, they awaited that the Special Tahsildar would pass a favourable order and that, in the absence of any communication from him, after sending legal notice on 04.05.2005, they filed Writ Petitions before this Court on 09.08.2005. The

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learned Judge, after noting a reference in the Award itself that the writ petitioners and the father of 4th petitioner appeared in the award enquiry, received the compensation amount under protest and requested to make a reference to the Civil Court for enhancement of the compensation under Section 18 of the Act, directed the 2nd respondent/Special Tahsildar to refer the matter under Section-18 of the Act to the appropriate Civil Court for enhancement of compensation within 6 weeks from the date of receipt of copy of the order.

3. Mr.Kasikumar, learned counsel appearing for the appellant/Housing Board vehemently contended that in view of the statutory provision, viz., Section-18, and the limitation prescribed therein, the Writ Petitions filed in the year 2005, that is nearly twenty years after passing of the award, seeking a direction for reference, cannot be sustained. In support of the above contention, he relied on a decision of the Apex Court reported in AIR 1995 SC 1991 (State of Maharashtra vs. Digambar) and a Division Bench decision of this Court, dated 13.09.2006, made in WA Nos.2979 to 2981 of 2002 etc. batch.

4. On the other hand, Mr.R.Muthukumarasamy, learned Senior Counsel for the respondents/writ petitioners contended that, in view of the specific reference in the Awards to the effect that the petitioners raised an objection and received the amount under protest and prayed for reference under Section-18, it is but proper on the part of the Land Acquisition Officer to refer it to the Civil Court and because of the lapse on the part of the Officer, the petitioners cannot be blamed. He also pointed out that as against the judgment and decree of the Sub Court, the Special Tahsildar, Neighbourhood Scheme, Erode, and other land owners preferred appeals before this Court and the same were disposed of only on 17.10.2003. He also submitted that as against the said decision, the claimants/land owners filed a Special Leave Petition, which is pending before the Supreme Court, in such circumstances, according to him, the Housing Board is in no way prejudiced by the direction of the learned single Judge and ultimately it is for the Court to decide as to whether the claimants are eligible to enhanced compensation.

5. There is no dispute that the Awards were passed on 29.11.1985 and 28.11.1985 in LA Nos.25 and 10 of 1982. It is also clear that Writ Petitioners-1 to 3 and the father of the 4th petitioner attended the Award enquiry and received the compensation under protest and, according to the learned Senior Counsel, they prayed for reference under Section-18. Those particulars are available in the Award itself. In such circumstances, in normal course, the Writ petitioners' case would be accepted for reference to the Civil Court for determination of proper compensation. At the same time, even if we accept that the Land Acquisition Officer was at fault, the question is whether such direction can be issued in the form of mandamus nearly after 20 years. Mr.Muthukumrasamy, learned Senior Counsel contended that in view of the admitted factual position as stated in the Awards, it is obligatory on the part of the authority, viz., Land

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Acquisition Officer, to refer it to the Civil Court. He further contended that, because of the inaction on the part of the officer, the claimants should not be penalised. In this regard, he relied on a Division Bench decision of this Court reported in 2006 (4) MLJ 254 (M.D., Tamil Nadu Housing Board v. Chinnasamy). In that case, the land owners/writ petitioners made a representation on 16.08.2000 for enhancement of compensation. The Special Tahsildar, Housing Schemes, Hosur, by letter dated 18.10.2000, after pointing out that their representation has been made after a period of 12 years, rejected their claim. The said order was challenged by way of 5 writ petitions by the land owners in 2000 itself. The learned Judge, after finding that the Land Acquisition Officer himself had assured the land owners for reference, directed the Officer to make appropriate reference under Section 18 of the Act. The Division Bench, taking note of the decision rendered by the First Bench in Steel Authority of India Limited, Salem Steel Plant, Salem v. Salem Urukkalai Thitthathal Nilam Ilanthor Sangam and others (2006 I MLJ 252), and also of the fact that the land owners expressed their protest and dissatisfaction to the award of compensation by the Land Acquisition Officer, concluded that the authority is under an obligation to refer the matter to the Court under Section 18(2) of the Act and confirmed the order of the learned single Judge, dismissing the Writ Appeal filed by the TNHB. Though we are in agreement with the said view, one important distinguishing factor is that, after the order of the Special Tahsildar, dated 18.10.2000, the petitioners therein approached this court in 2000 itself by way of Writ Petitions, questioning the said order. In the cases on hand, we have already mentioned that the Awards were passed as early as on 28.11.1985 and 29.11.1985. Even if we accept that there was a valid protest in respect of the amount determined by the Land Acquisition Officer and also a request for reference, it is but proper on the part of the land owners to pursue their remedy by verification from the officer concerned or by approaching this Court for appropriate direction. They cannot leave the matter as it is without any concern and leisurely file a writ petition seeking a direction for reference after a long gap of twenty years. In the affidavit filed in support of the Writ Petitions, nowhere they have given any reason for the inordinate delay or laches for not taking any action from 1985 till 09.08.2005 when they filed the Writ Petitions. Though, as pointed out by the learned Senior Counsel, it is incumbent on the part of the Land Acquisition Officer to refer the matter, equally, it is also the responsibility of the Land Owners to verify from the office of the Land Acquisition Officer about their request for reference. It is relevant to point out that, pursuant to their objections in the award enquiry, the Land Acquisition Officer referred the matter under Section-30 of the Act and it came to an end recently, ie., in 2004. That being so, if the petitioners are really interested for higher compensation, at least during the proceedings under Section-30, they could have asked the Land Acquisition Officer and verified about the reference under Section-18. The fact remains that no such verification was made by any of the petitioners. In this regard, it is useful to refer to the judgment of the Supreme Court reported in AIR 1995 SC 1991 (cited supra), wherein Their

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Lordships have held that where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement for such relief due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as the same is not made judiciously and reasonably in exercise of its sound judicial discretion, but made arbitrarily. In the light of the factual aspects involved therein, it was also observed that undue delay of 20 years on the part of the writ petitioner in invoking the High Court's extraordinary jurisdiction under Article 226 of the Constitution for grant of compensation to his land alleged to have been taken by the Governmental agencies would suggest that his land was not taken against his consent he had acquiesced in such taking and waived his right to take compensation for it, thus, when the writ petitioner was guilty of laches or undue delay in approaching the High Court, the principle of laches or undue delay disentitled the writ petitioner for discretionary relief under Article 226 from the High Court, particularly, when virtually no attempt had been made by the Writ petitioner to explain his blameworthy conduct of undue delay or laches.

6. As observed in the above decision and as discussed in the earlier paragraphs, we are satisfied that when virtually no attempt had been made by the petitioners, no relief exercising the extraordinary jurisdiction under Article 226 can be granted. It is also relevant to note that in WA Nos.2979 to 2981 of 2002 etc. etc. Batch, dated 13.09.2006, in similar circumstances, after finding that the writ petitioners have not bothered to verify as to whether the reference has been made or not till they approached this Court in the year 2002 after a period of nearly 14 years and also taking note of the fact that the lands were taken over by the Housing Board and the Scheme was fully implemented, the Division Bench allowed the WAs filed by the Special Tahsildar and the Housing Board, setting aside the similar direction issued by the learned Judge. In the case on hand also, it is the specific stand of the appellant/Housing Board that after taking over the lands, they already developed and allotted the same to the public and, at this juncture, viz., after 20 years, if compensation is enhanced, it would be highly impossible for the Housing Board to recover the sum from the allottees. The apprehension and claim of the Housing Board cannot be lightly rejected. Though the land owners are entitled to reasonable price for their land, we are of the view that they are not diligent in prosecuting their claim and the lapses on their part in filing the Writ Petitions after a long period of two decades have not been properly explained. The delay or laches have not been taken note of and, without adverting to all these relevant factors, the learned Judge issued a direction for reference.

7. Before parting, we intend to add that courts always have shown a flexible approach towards the claimants/land owners in view of the reason that their lands have been taken away by the State, and in some cases, the lands might be their sole source of income. However, in cases

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like the ones on hand, such a soft approach cannot be adopted since courts decide the matters dispassionately with judicial sense rather than compassionate sense, hence, the acute lethargy on the part of the parties concerned in sleeping over the matter without any care therefor, cannot be viewed slightly and somewhere, we have to draw a line, as otherwise, it would set a bad trend for others. Hence, we have no other option but to dismiss the claim of the respondents/writ petitioners.

In the light of what is stated above, we accept the stand taken by the appellant/Housing Board and set aside the common order dated 17.08.2005 in WP Nos.26085 and 26086 of 2005. Writ Appeals are allowed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.

To

1. District Collector, Erode District, Erode.
2. The Special Tahsildar (LA), Neighbourhood Scheme, Erode.

2 cc To Mr.Manokaran, Advocate, SR.59128 & 59129.
1 cc To The Government Pleader, SR.58833.

WA Nos.346 & 347 of 2006.

RS(CO)
RVL 12.12.2006

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